Supreme Court, U. S.
FILED
JAN 4 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1072

FORD MOTOR CREDIT COMPANY,

Petitioner,

v.

CATHERINE EDMONDSON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

LEVINE & D'ALESSIO, P.A.
MORTON P. LEVINE
BURGESS W. STONE
2415 The Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303
(404) 521-1624
Attorneys for Petitioner

Of Counsel:

SCHIFF HARDIN & WAITE
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-1000

January 3, 1979

La Salle Street Press — Chicago Printed in U.S.A.

TABLE OF CONTENTS

	PAGE
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	2
Statement of Facts	4
Reasons for Granting the Writ	6
I. The Decision Below Ignores Authoritative Sources of Interpretation of the Truth in Lending Act	7
A. The Decision Below Ignores the Federal Reserve Board's Regulations and Interpretations	7
B. The Decision Below Ignores State Commercial Law	10
C. The Decision Below Ignores Custom and Usage	12
II. The Vague New Test Announced by the Decision Below Reflects and Reinforces the Confusion in the Lower Federal Courts	13
A. Other Federal Decisions Conflict with the Decision Below	13
B. Other Federal Decisions Use a Different Standard to Interpret the Relevant Provisions of Truth in Lending Act	14
C. The Fifth Circuit's Vague New Test Should Be Avoided Because it Puts the Truth in Lending Act in Constitutional Jeopardy	15
D. This Court Must Resolve the Confusion Created by the Decision Below	16

PAGE

III. The Fifth Circuit's Decison Does Not Advance the Purposes of the Truth in Lending Act But Has a Substantial Adverse Impact on Consumer Credit Transactions 17

Conclusion 21

Appendix

Opinion of the Court of Appeals for the Fifth Circuit (July 28, 1978) A-1

Order of the Court of Appeals (July 28, 1978) A-13

Order of the Court of Appeals on Petition for Rehearing and Rehearing En Banc (October 6, 1978) A-14

Order of the United States District Court for the Northern District of Georgia, Atlanta Division (August 27, 1976) A-15

Recommendation of Special Master (April 29, 1976) A-17

Automobile Retail Instalment Contract between Catherine T. Edmondson and Allen-Russell Ford, Inc. . A-24

TABLE OF AUTHORITIES

Cases

Basham v. Finance America Corporation, 583 F.2d 918 (7th Cir. 1978) 14

Bone v. Hibernia Bank, 493 F.2d 135 (9th Cir. 1974) .. 8, 9

Brown v. Jenkins, 135 Ga. App. 694, 218 S.E. 2d 690 (1975) 11

Burrell v. City Dodge, Inc, Cons. Cred. Guide (CCH) ¶98,764 (N.D. Ga. 1974) 16

Connally v. General Construction Co., 269 U.S. 385 (1926) 16

Douglas v. Beneficial Finance Co., 469 F.2d 453 (9th Cir. 1972) 9, 17

Drew v. Flagship First National Bank of Titusville, 448 F.Supp. 434 (M.D. Fla. 1977) 14

PAGE

Eby v. Reb Realty, Inc., 495 F.2d 646 (9th Cir. 1974) .. 9

Gennuso v. Commercial Bank and Trust Co., 566 F.2d 437 (3d Cir. 1977) 14

Graham v. Richardson, 403 U.S. 365 (1971) 15

Grant v. Imperial Motors, Inc., 539 F.2d 506 (5th Cir. 1976) 16

Irvin v. Public Finance Company of Alabama, 340 So. 2d 811 (Ala. App. 1976) 15

James v. Ford Motor Credit Co., No. 78-F-647 (D.Colo. August 21, 1978) 14

Johnson v. McCrackin-Sturman Ford, Inc., 527 F.2d 257 (3rd Cir. 1975) 9, 12

Jones v. Allied Loans, Inc., 447 F.Supp. 1121 (D.S.C. 1977) 14

Jordan v. De George, 341 U.S. 223 (1951) 16

Moore v. Great Western Savings & Loan Ass'n, 513 F.2d 688 (9th Cir. 1975) 9

Mourning v. Family Publications Service, 411 U.S. 356 (1973) 9

Regional Rail Reorganization Act Cases, 419 U.S. 102 (1974) 15

Rollins Communications, Inc. v. Georgia Institute of Real Estate, Inc., 140 Ga. App. 448, 231 S.E.2d 397 (1976) 11

Rounds v. Community National Bank, 454 F.Supp. 883 (S.D. Ill. 1978) 13, 14, 16

Shanks v. Greenbriar Dodge, Inc., 577 F.2d 296 (5th Cir. 1978) 17

A.B. Small Co. v. American Sugar Refining Co., 267 U.S. 233 (1925) 16

Starks v. Orleans Motors, Inc., 372 F.Supp. 928 (E.D. La. 1974), *aff'd mem.*, 500 F.2d 1182 (5th Cir. 1974) . 14

Taylor v. R.H. Macy & Co., Inc., 481 F.2d 178 (9th Cir. 1973), *cert. denied*, 414 U.S. 1068 (1973) 9

PAGE

United States v. Standard Brewery, 251 U.S. 210 (1920) 15

Willis v. Town Finance Corporation of Atlanta, 416 F.Supp. 10 (N.D. Ga. 1976) 15

Wilson v. Allied Loans, Inc., 448 F.Supp. 1020 (D. S.C. 1978) 15

Statutes and Rules

Colo. Rev. Stat. §§ 5-1-101, *et seq.* 11

Consumer Credit Protection Act, 15 U.S.C.A. §§ 1601, *et seq.*

Section 128(a)(10), 15 U.S.C.A. § 1638(a)(10) 2

Ga. Code § 109A-9-104(f) (1975) 11

Idaho Code §§ 28-31-101, *et seq.* 11

Ind. Code Ann. §§ 24-4.5-1-101, *et seq.* (Burns) 11

Iowa Code Ann. §§ 537.1101, *et seq.* (West) 11

Judicial Code, 28 U.S.C. § 1254(1) 2

Kan. Stat. §§ 16a-1-101, *et seq.* 11

Me. Rev. Stat. tit 9A, §§ 1-101, *et seq.* 11

Motor Vehicle Retail Instalment Sales Act, N.Y. Pers. Prop. Law (McKinney) §§ 301, *et seq.*

Section 2, N.Y. Pers. Prop. Law (McKinney) § 302 10

Section 14, N.Y. Pers. Prop. Law (McKinney) § 314 10

Okla. Stat. Ann. tit. 14A, §§ 1-101, *et seq.* (West) 11

S.C. Code §§ 37-1-101, *et seq.* 11

Truth in Lending Regulations, Regulation Z, 12 C.F.R. § 226.1, *et seq.* (1978)

Regulation Z, 12 C.F.R. § 226.2(gg) (1978) 3, 7

Regulation Z, 12 C.F.R. § 226.8(b)(5) (1978) 2, 3

Uniform Commercial Code, § 2-702 17

Uniform Consumer Credit Code, § 1.101, *et seq.* (1968)

Section 2.407 10

PAGE

Section 4.103 11

Section 4.108 10

Uniform Consumer Credit Code, § 1.101, *et seq.* (1974)

Section 3.301 11

Section 4.103 11

Section 4.108 11

Utah Code Ann. §§ 70B-1-101, *et seq.* 11

Wis. Stat. Ann. §§ 421.101, *et seq.* (West) 11

Wyo. Stat. Ann. §§ 40-14-101, *et seq.* 11

Other

1 Anderson, *Uniform Commercial Code*, § 1-201:110(3) (2d ed. 1970) 11

1 Cons. Cred. Guide (CCH) ¶¶ 4270, 4400-4430 12

Federal Reserve Board Staff Opinion No. 1053 [1974-77 Special Releases Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,393 (May 28, 1976) 15

Federal Reserve Board Staff Opinion No. 1066 [1974-77 Special Releases Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,406 (June 4, 1976) 8, 17

Federal Reserve Board Staff Opinion No. 1084 [1974-77 Special Releases Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,424 (June 15, 1976) 17

Federal Reserve Board Staff Opinion No. 1263 [1974-77 Special Releases Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,736 (November 23, 1977) 10

9 Fed. Res. Bull., A42 (Table 1.55) (Sept. 1978) 18

Finance Facts Yearbook 1977, at 45-47 (Table 18) ... 18

1 Gilmore, *Security Interests in Personal Property* § 11.1, at 336 (1965) 12

Washington Credit Letter (November 13, 1978) 20

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. .....

FORD MOTOR CREDIT COMPANY,

Petitioner,

v.

CATHERINE EDMONDSON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner, FORD MOTOR CREDIT COMPANY (hereinafter "Ford Credit"), prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this matter on July 28, 1978.

OPINIONS BELOW

The opinion of the Court of Appeals (A-1-A-12) is reported at 577 F.2d 291. The opinion of the District Court (A-15-A-16), and the Recommendation of the Special Master which the District Court adopted (A-17-A-23), are not reported.

JURISDICTION

The Judgment of the United States Court of Appeals for the Fifth Circuit was entered on July 28, 1978. The order

denying Ford Credit's timely Petition for Rehearing en Banc was entered on October 6, 1978 (A-14). This petition was filed within 90 days of that date.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Do the Consumer Credit Protection Act, 15 U.S.C.A. § 1638(a)(10), and Regulation Z, 12 C.F.R. § 226.8(b)(5) (1978), require that an assignment of returned or unearned insurance premiums be considered a "security interest" requiring separate disclosure on the face of an automobile retail instalment contract, contrary to Federal Reserve Board interpretations, state law and settled commercial usage?

2. What standard should the federal courts apply in determining whether a particular commercial arrangement amounts to a "security interest" under the Consumer Credit Protection Act and Regulation Z?

STATUTES INVOLVED

The statute and regulations involved in this case are:

Consumer Credit Protection Act, § 128(a)(10) (15 U.S.C.A. § 1638(a)(10)):

> **Sales not under open end credit plans.**
>
> (a) In connection with each consumer credit sale not under an open end credit plan, the creditor shall disclose each of the following items which is applicable:
>
> • • •
>
> (10) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

Regulation Z, 12 C.F.R. § 226.2(gg) (1978):

> "Security interest" and "security" mean any interest in property which secures payment or performance of an obligation. The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialmen's, artisan's, and other similar liens, vendor's liens in both real and personal property, the interest of a seller in a contract for the sale of real property, any lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

Regulation Z, 12 C.F.R. § 226.8(b)(5) (1978):

> (b) *Disclosures in sale and nonsale credit.* In any transaction subject to this section, the following items, as applicable, shall be disclosed:
>
> • • •
>
> (5) A description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify. In any such case where a clear identification of such property cannot properly be made on the disclosure statement due to the length of such identification, the note, other instrument evidencing the obligation, or separate disclosure statement shall contain reference to a separate pledge agreement, or a financing statement, mortgage, deed of trust, or similar document evidencing the security interest, a copy of which shall be furnished to the customer by the creditor as promptly as practicable. If after-acquired property will be subject to the security interest, or if other or future indebtedness is or may be secured by any such property, this fact shall be clearly set forth in conjunction with the description or identification of the type of security interest held, retained or acquired.

STATEMENT OF FACTS

On April 24, 1975, Catherine T. Edmondson entered into an Automobile Retail Instalment Contract with Allen-Russell Ford, Inc. for the purchase of a 1970 MG Midget (A-24-A-25). The contract was subsequently assigned to Ford Credit.

As required by the Consumer Credit Protection Act, 15 U.S.C.A. §§ 1601, *et seq.* (hereinafter the "Truth in Lending Act" or the "Act"), the face of the contract (which is the "disclosure statement" under the Act) contained certain disclosures. In paragraph 13, the contract disclosed the security interest acquired by Ford Credit as follows:

> Security Interest: Seller shall have a security interest under the Uniform Commercial Code in the Property (described above) and in the proceeds thereof to secure the payment in cash of the Total of Payments and all other amounts due or to become due hereunder.

In paragraph 18, which is contained on the reverse side of the contract and so is not a part of the "disclosure statement," the contract required the buyer to purchase and maintain in force physical damage insurance on the collateral. That paragraph also provided:

> *Buyer hereby assigns to Seller any monies payable under such insurance, by whomever obtained, including returned or unearned premiums,* and Seller hereby is authorized on behalf of both Buyer and Seller to receive or collect same, to endorse checks or drafts in payment thereof, to cancel such insurance or to release or settle any claim with respect thereto. The proceeds from such insurance, by whomever obtained, shall be applied toward replacement of the Property or payment of the indebtedness hereunder in the sole discretion of Seller. (Emphasis added.)

The italicized portion of this provision means that if the insurance policy on the vehicle is cancelled, any unearned

premiums will go to Ford Credit.[1] Under the standard policy, both the insurance company and the buyer have a right to cancel the coverage; Ford Credit has no contractual or other right to force cancellation. Moreover, the buyer's failure to make payments on the loan does not cancel the insurance coverage. Thus, the chief characteristics of the right to unearned premiums are: (1) they become payable only when a policy is cancelled; (2) Ford Credit has no control over the decision to cancel; and (3) cancellation is not causally related to the buyer's default because the policy stays in effect even after the buyer has defaulted on his principal obligation.

The normal expectation, of course, is that the policy will run its course and all premiums will be earned. The right to unearned premiums has little economic value because the amount involved (the cost of minimum property coverage) is generally small to begin with, because it decreases over the term of the policy, and because it will come to Ford Credit only if the insurance is cancelled prior to the scheduled termination of the coverage. If the right to unearned premiums is an interest in property at all, it might best be described as an "incidental" interest, unrelated to the primary purpose of the consumer credit transaction.

Plaintiff filed suit on May 19, 1975 in the United States District Court for the Northern District of Georgia, contending, nevertheless, that this assignment of insurance premiums constituted a "security interest" which should

[1] The insurance company also has a right to decline to issue the policy at the outset, in which case the premium would be returned. The terms "cancel" and "cancellation" are used herein to refer to this right as well. Similarly, the term "unearned" premiums is used herein to include "returned" premiums.

have been disclosed under the Truth in Lending Act, and asserting other claims no longer at issue. Ford Credit argued that the assignment was not a security interest within the meaning of the Act since it was never intended to secure the obligation incurred. The Special Master to whom the case was assigned recommended to the District Court that liability be imposed on Ford Credit on account of this claim, and the District Court adopted that recommendation. On appeal the Fifth Circuit affirmed, reasoning that the right afforded Ford Credit by paragraph 18 was a "valuable economic right" (A-5-A-9) and was the sort of interest which the Truth in Lending Act requires be disclosed as a security interest.

REASONS FOR GRANTING THE WRIT

The Fifth Circuit's decision in this case creates a new and hopelessly amorphous test for determining what is a security interest requiring disclosure under the Truth in Lending Act. It does so by ignoring authoritative sources of interpretation, one of which this Court has held must be given substantial weight. The decision reflects present uncertainty, and generates more uncertainty, in an important area of the national economy where certainty and predictability are essential to maintain the free flow of credit. If allowed to stand, it places in jeopardy millions of consumer credit transactions entered into in good faith and, perhaps more importantly, makes compliance with the Truth in Lending Act in multitudinous future transactions into little more than a guessing game—but a guessing game with very high stakes. This Court must step in to bring some order out of what can only be described as chaos in the lower federal courts.

I.

THE DECISION BELOW IGNORES AUTHORITATIVE SOURCES OF INTERPRETATION OF THE TRUTH IN LENDING ACT.

A. The Decision Below Ignores the Federal Reserve Board's Regulations and Interpretations.

The Truth in Lending Act does not define the term "security interest". The Federal Reserve Board ("Board"), specifically empowered by Congress to interpret the requirements of the Truth in Lending Act, has defined "security interest" in Regulation Z, 12 C.F.R. § 226.2(gg) (1978), as "any interest in property which secures payment or performance of an obligation." The Regulation also gives some specific examples of what the Board had in mind:

> . . . security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialmen's, artisan's, and other similar liens, vendor's liens in both real and personal property, the interest of a seller in a contract for the sale of real property, any lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

These examples make it clear that the Regulation focuses on security interests the purpose and function of which is to secure the debt—and *not* on interests in property which are incidental to the consumer transaction at issue. Proper respect for the Board's Regulation Z, read with any understanding of the principle of *ejusdem generis*, would halt the Act's disclosure requirement well short of the sort of incidental interest in property at issue here. The Fifth Circuit ignored the clear import of the Regulation.

The Board has also explained the purpose behind disclosure of Truth in Lending Act security interests:

> The security interest disclosure in Regulation Z is intended to serve the very important function of informing a customer that his property might be reached to satisfy payment of the obligation which he has incurred, *in the event that the disclosed credit terms are not met by the customer.* This knowledge may encourage the customer to more realistically assess the credit terms and his own ability to meet them, knowing that his subsequent failure to comply with those terms may result in the loss of property. (Emphasis supplied.) Federal Reserve Board Staff Opinion No. 1066 [1974-77 Special Releases Transfer Binder] CONS. CRED. GUIDE (CCH) ¶ 31,406 (June 4, 1976).

The right to receive unearned insurance premiums is wholly unrelated to the consumer's ability "to satisfy payment of the obligation which he has incurred," because the very existence of the unearned premiums depends upon the cancellation of coverage, a decision unrelated to default and one over which the lender has no control. Disclosure of this assignment as a security interest would simply not serve the purpose for which the Board has said such disclosures are required by the Act—to let the borrower know what property will be reachable *on default.* The Fifth Circuit's decision also ignores this clear interpretation of the Act by the Board.

Congress gave the Board broad authority to interpret the requirements of the Truth in Lending Act. Judicial deference to the Board's interpretations is an essential element in the fair and efficient administration of the Act. Through the exercise of its broad responsibilities under the Act, the Board has gained valuable experience and developed a unique level of technical expertise and understanding of the policy considerations underlying the Act. The significance of these qualities was recognized in *Bone* v. *Hibernia Bank,* 493 F.2d 135 (9th Cir. 1974):

> We believe that it is precisely these kinds of policy decisions about the disclosure statement, requiring the weighing and balancing of the various available choices, that Congress entrusted to the Federal Reserve Board by granting it such broad powers. The conclusions thus reached by the Board are based upon its specialized experience and access to information, which is not likely to come to the attention of a particular judge in a given case. 493 F.2d, at 140.

Respect for the Board's views is also necessary in order to insure uniformity in the disclosures made by creditors, which is vital to the fulfillment of the purposes of the Truth in Lending Act. A set of disclosure requirements which are interpreted and applied uniformly will provide a single form of disclosure that consumers can become familiar with and understand.

The informed judgment of the Board has been accorded substantial weight by the courts. *Moore* v. *Great Western Savings & Loan Ass'n,* 513 F.2d 688, 690 (9th Cir. 1975); *Johnson* v. *McCrackin-Sturman Ford, Inc.,* 527 F.2d 257, 267-68 (3rd Cir. 1975); *Eby* v. *Reb Realty, Inc.,* 495 F.2d 646, 650 (9th Cir. 1974); *Bone* v. *Hibernia Bank,* 493 F.2d 135, 140 (9th Cir. 1974); *Taylor* v. *R. H. Macy & Co., Inc.,* 481 F.2d 178, 180 (9th Cir. 1973), *cert. denied,* 414 U.S. 1068 (1973); *Douglas* v. *Beneficial Finance Co.,* 469 F.2d 453, 456 n.2 (9th Cir. 1972). This Court has itself recognized the important role of the Board in interpreting the requirements of the Truth in Lending Act. *Mourning* v. *Family Publications Service,* 411 U.S. 356, 365 (1973).

Yet in equating a Truth in Lending Act "security interest" with a "valuable economic right," the Fifth Circuit swept past the express language of Regulation Z, which requires a determination whether this interest "secures payment or performance of an obligation." The decision below also pays little attention to the Board's conclusion that the Act should be interpreted to focus on, and require disclosure of, only the lender's rights upon default. Proper

deference to the Board's careful interpretation of the Act would have led to the conclusion that this incidental interest in unearned insurance premiums is not the sort of interest that requires disclosure under the Truth in Lending Act.

B. The Decision Below Ignores State Commercial Law.

In addition, the Fifth Circuit's decision ignored another important source of authority: the manner in which state commercial law treats the assignment of unearned insurance premiums. The Board itself has indicated that questions whether particular rights constitute Truth in Lending Act security interests "would be better addressed as a matter of State law." Federal Reserve Board Staff Opinion No. 1263 [1974-77 Special Releases Transfer Binder] CONS. CRED. GUIDE (CCH) ¶ 31,736 (November 23, 1977).

State legislation regulating the credit industry does not regard a creditor's right to unearned insurance premiums as a security interest. For example, the New York Motor Vehicle Retail Instalment Sales Act, N.Y. Pers. Prop. Law (McKinney), Art. 9, in Section 314 prohibits "the creation of a security interest in any personal or real property, other than the motor vehicle which is the subject matter of the retail instalment sale. . . ." and yet provides in Section 302 that any "unearned insurance premium refund received by the holder of the contract . . . shall be credited to the final maturing instalments of the retail instalment contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder of the contract or either of them."

The Uniform Consumer Credit Code, now adopted in various forms by 11 states, also bars in one section the taking of a security interest in anything but the property purchased and in another section contemplates that the creditor may nonetheless take an assignment of unearned insurance premiums. *Compare* UCCC, § 2.407 with § 4.108

(1968), and UCCC, § 3.301 with § 4.108 (1974).[2] Clearly the authors of that statute, like those who wrote New York's, did not view the assignment of unearned premiums as a security interest.

Commentators on state commercial law also do not consider incidental interests in property such as unearned insurance premiums to be something which should be regulated as a security interest. Where the assignment is absolute and does not relate to default, for example, there is no security interest under the Uniform Commercial Code:

> An absolute assignment of money due under a contract in payment of a debt owed by the assignor is not the creation of a security interest under the Code. . . . 1 Anderson, *Uniform Commercial Code,* § 1-201:110(3) (2d ed. 1970).[3]

[2] The following states have enacted a version of the UCCC: COLORADO, COLO. REV. STAT. §§ 5-1-101, *et seq.;* IDAHO, IDAHO CODE §§ 28-31-101, *et seq.;* INDIANA, IND. CODE ANN. §§ 24-4.5-1-101, *et seq.* (Burns); IOWA, IOWA CODE ANN. §§ 537.1101, *et seq.* (West); KANSAS, KAN. STAT. §§ 16a-1-101, *et seq.;* MAINE, ME. REV. STAT. tit. 9A, §§ 1-101, *et seq.;* OKLAHOMA, OKLA. STAT. ANN. tit. 14A, §§ 1-101, *et seq.* (West); SOUTH CAROLINA, S.C. CODE §§ 37-1-101, *et seq.;* UTAH, UTAH CODE ANN. §§ 70B-1-101, *et seq.;* WISCONSIN, WIS. STAT. ANN. §§ 421.101, *et seq.* (West); WYOMING, WYO. STAT. §§ 40-14-101, *et seq.* The UCCC regulates only "consumer credit insurance," a term which does not include property insurance. See UCCC, § 4.103(1) (1968) and § 4.103(1) (1974).

[3] Georgia law would not consider this assignment a UCC security interest for additional reasons. Georgia adopted the Uniform Commercial Code in 1962; under GA. CODE § 109A-9-104(f) (1975), which was effective when this case arose, "a transfer of an interest or claim in or under any policy of insurance" is excluded from Article 9 coverage. And even under the Georgia UCC, the question of whether a transfer of a right creates a "security interest" is a question of intent of the parties. *See, e.g., Rollins Communications, Inc.* v. *Georgia Institute of Real Estate, Inc.,* 140 Ga. App. 448, 231 S.E.2d 397 (1976); *Brown* v. *Jenkins,* 135 Ga. App. 694, 218 S.E.2d 690 (1975).

In addition, Professor Gilmore explains that the law has never tried to regulate as statutory security interests the bewildering variety of incidental arrangements which borrowers and lenders reach. Moreover, Gilmore's analysis makes it clear that default is an essential element in the definition of a security interest. *See,* 1 Gilmore, *Security Interests in Personal Property* § 11.1, at 336 (1965).

In reaching its *Edmondson* decision, the Fifth Circuit thus ignored an important and authoritative source of interpretation: the settled commercial law of the states.

C. The Decision Below Ignores Custom and Usage.

Finally, the custom and usage of borrowers and lenders themselves provide a reliable guide as to what is and what is not a "security interest." Terms having a common and well understood meaning in the industry being regulated should be interpreted consistent with that established meaning. *Johnson* v. *McCrackin-Sturman Ford, Inc.,* 527 F.2d 257, 265-66 (3rd Cir. 1975). Lenders and borrowers have never treated the term "security interest" as including the right to receive unearned insurance premiums, which are usually purchased with the proceeds of their financing. The standard legal reporting service in this area, for example, covers the entire area of "security interests" without treating an assignment of unearned insurance premiums; that matter is covered, where it belongs, in the section on insurance to which it is incident. See 1 CONS. CRED. GUIDE (CCH) ¶¶ 4270, 4400-4430.

Thus the Fifth Circuit ignored virtually every source of authority determining what is or is not a security interest for Truth in Lending Act purposes—the regulations and interpretations of the Board, the commercial law of the states, and the expectations of borrowers and lenders as reflected in industry usage.

II.

THE VAGUE NEW TEST ANNOUNCED BY THE DECISION BELOW REFLECTS AND REINFORCES THE CONFUSION IN THE LOWER FEDERAL COURTS.

A. Other Federal Decisions Conflict with the Decision Below.

In *Rounds* v. *Community National Bank,* 454 F.Supp. 883 (S.D. Ill. 1978), the District Court reached a conclusion directly contrary to the Fifth Circuit's on the precise question presented by this case.

In *Rounds,* the court reasoned that Federal Courts did not have the "judicial power, under the guise of construction, to impose disclosure requirements which transcend those mandated by the statute." *Ibid.,* at 887. The court then concluded:

> [N]ot every interest or benefit running to a creditor is a security interest within the intendment in the Act and the Regulation. (Citation omitted). Both the assignment of unearned premiums and the assignment of insurance proceeds do provide some benefit and protection to the lender. But neither of those provisions subject the debtor's property to any lien or any risk. Rather, the insurance provisions of the agreement are properly construed as being mutually protective of the interests of both the debtor and the creditor.
>
> • • •
>
> It must be concluded that the contract provisions in question did not create security interests within the intendment of the Act and Regulation. The provisions impose no claim against, nor risk to, the plaintiff's assets. If such ephemeral interests are to be deemed to be security interests within the disclosure requirements of the Act, that determination should emanate from Congressional enactment or from a determination of the Board, not from a judicial decree. 454 F.Supp. at 888.

Rounds thus put the assignment of unearned insurance premiums in the category where it belongs—an incidental interest in property—and outside the scope of Truth in Lending security interests.[4]

In *James* v. *Ford Motor Credit Company,* No. 78-F-647 (D. Colo. August 21, 1978), the District Court reached the same conclusion with respect to an assignment of the right to the proceeds of insurance payable upon loss, construing language identical to that in the present contract.

B. Other Federal Decisions Use a Different Standard To Interpret the Relevant Provisions of Truth in Lending Act.

The results in *Rounds* and *James* reflect the fact that other courts (including the Seventh Circuit and, apparently on occasion, the Fifth Circuit) look to something more than the potential economic right conferred to determine the nature and scope of a security interest under the Truth in Lending Act; they look to the commercial law of the states. In *Basham* v. *Finance America Corporation,* 583 F.2d 918, 924 (7th Cir. 1978), the court stated, "The legal extent of a security interest is determined according to state law. . . ." In *Drew* v. *Flagship First National Bank of Titusville,* 448 F.Supp. 434, 437-38 (M.D. Fla. 1977), the court noted, "... the Uniform Commercial Code now provides a universal definition of the term 'security interest' ". In *Jones* v. *Allied Loans, Inc.,* 447 F.Supp. 1121, 1125 (D.S.C. 1977), the court observed, "State law determines the nature and extent of the security interest required to be disclosed under the Act and regulations." *See also, Starks* v. *Orleans Motors, Inc.,* 372 F.Supp. 928, 931 (E.D. La. 1974), *aff'd mem.,* 500 F.2d 1182 (5th Cir. 1974).

[4] The Third Circuit has indicated that an interest in unearned insurance premiums is a Truth in Lending Act security interest. *Gennuso* v. *Commercial Bank and Trust Co.,* 566 F.2d 437 (3d Cir. 1977). However, the issue was not litigated by the parties, who focused on the adequacy of disclosure.

Moreover, the courts have automatically and consistently examined state commercial law to determine a related question—whether or not the description of the security interest (once a security interest has been determined to exist) is sufficient. This is best illustrated by the cases involving security interest in after-acquired property. *See, e.g., Wilson* v. *Allied Loans, Inc.,* 448 F.Supp. 1020 (D.S.C. 1978); *Willis* v. *Town Finance Corporation of Atlanta,* 416 F.Supp. 10 (N.D. Ga. 1976); *see also Irvin* v. *Public Finance Company of Alabama,* 340 So.2d 811 (Ala. App. 1976); Federal Reserve Board Staff Opinion No. 1053 [1974-77 Special Releases Transfer Binder] CONS. CRED. GUIDE (CCH) ¶ 31,393 (May 28, 1976).

C. The Fifth Circuit's Vague New Test Should Be Avoided Because It Puts the Truth in Lending Act in Constitutional Jeopardy.

The Fifth Circuit's new standard looks to the value of the economic right conferred. Except that the manner in which the test was applied in this case suggests its potential breadth, the test gives little or no guidance. Perhaps *all* "valuable economic rights" are suddenly Truth in Lending Act security interests so long as a court can conceive of circumstances, however remote, under which the "value" would be applied to the borrower's account. Perhaps there is some further but unstated sorting process to be applied. The Fifth Circuit's new test gives no clue. The very vagueness of the Fifth Circuit's test is a reason to avoid it, lest the statute and regulation so read create a serious constitutional issue.

The courts should avoid construing a statute in a way that casts doubt upon its constitutionality. *Regional Rail Reorganization Act Cases,* 419 U.S. 102, 135 (1974); *Graham* v. *Richardson,* 403 U.S. 365, 382 (1971); *United States* v. *Standard Brewery,* 251 U.S. 210, 220 (1920). The Truth

in Lending Act, as interpreted in *Edmondson*, contains a definition of "security interest" so vague that "men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally* v. *General Construction Co.*, 269 U.S. 385, 391 (1926). Yet, substantial penalties attach to reading the definition in what later proves, in the judgment of an appellate court, to have been the wrong fashion. If allowed to stand, the Fifth Circuit's novel reading of the Truth in Lending Act's requirements for disclosure of "security interests" puts the Act itself in constitutional jeopardy. *See generally, Jordan* v. *De George*, 341 U.S. 223, 231 (1951); *A.B. Small Co.* v. *American Sugar Refining Co.*, 267 U.S. 233, 239 (1925).

D. This Court Must Resolve the Confusion Created by the Decision Below.

The Fifth Circuit's decision, read with past case law, does not bring any certainty to this area of the law; it does just the reverse.

The confusion which will result is demonstrated by the fact that several arguably valuable economic rights conferred by contract have been held *not* to create "security interests" for Truth in Lending purposes. *See, e.g. Burrell* v. *City Dodge, Inc.*, 5 Cons. Cred. Guide (CCH) ¶ 98,764 (N.D. Ga. 1974) dealing with the creditor's right to pursue a deficiency judgment on default; *Rounds* v. *Community National Bank*, 454 F.Supp. 883 (S.D. Ill. 1978), which, in addition to deciding the issue in this case, deals with the creditor's right to insurance proceeds in the event of loss; Special Master's opinion in *Edmondson* (A-23), dealing with the creditor's right to hold personal property found in the vehicle after repossession; *see also, Grant* v. *Imperial Motors, Inc.*, 539 F.2d 506 (5th Cir. 1976), dealing with the creditor's right to repossess on default.

Similarly, a number of creditors' rights created by statute —valuable economic rights—have been held not to create

security interests under the Truth in Lending Act or have been interpreted by the Board in that fashion. *See, e.g., Douglas* v. *Beneficial Finance Co.*, 469 F.2d 453 (9th Cir. 1972), dealing with the creditor's right to confession of judgment; Federal Reserve Board Staff Opinion No. 1084 [1974-77 Special Releases Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,424 (July 15, 1976), dealing with the right of set-off; Federal Reserve Board Staff Opinion No. 1066 [1974-77 Special Releases Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,406 (June 4, 1976), dealing with the creditor's right to reclamation under UCC § 2-702.

These cases do not apply the standard used by the court below; indeed, they demonstrate in themselves something of the confusion that reigns in this area. The Fifth Circuit's opinion, with its new test, casts further doubt on all of them if it is allowed to stand.

The area of the law into which the Fifth Circuit so incautiously waded was ripe for this Court's attention even before the *Edmondson* decision; it now cries out for this Court's guidance.

III.

THE FIFTH CIRCUIT'S DECISION DOES NOT ADVANCE THE PURPOSES OF THE TRUTH IN LENDING ACT BUT HAS A SUBSTANTIAL ADVERSE IMPACT ON CONSUMER CREDIT TRANSACTIONS.

In *Shanks* v. *Greenbriar Dodge, Inc.* (reversed by the Fifth Circuit upon the authority of *Edmondson*, 577 F.2d 296) the Magistrate's Report to the trial court noted:

> From a review of the cases submitted to this Magistrate recently, it would appear that under these circumstances, most lenders in the District claim the same right in the unearned premiums which the defendant here did, and it would appear further that this fact is not disclosed as a security interest.

The Magistrate was correct. Indeed, most consumer credit contracts throughout the United States contain provisions with respect to assignment of unearned insurance premiums similar to those in Ford Credit's contract form and do not disclose these provisions as security interests. The decision of the Fifth Circuit in *Edmondson* places in jeopardy millions of consumer credit contracts now outstanding. Yet the decision does not advance by one iota the purposes of the Truth in Lending Act, since it requires disclosure which tells the consumer nothing about his rights on default. *See supra,* pp. 7-8.

Although the dollar amount involved in this case is small, it would be misleading to ignore the staggering volume of transactions that are subject to the Act and Regulation Z and to which the principles adopted in this case will apply. At year-end 1976, for example, total consumer instalment credit outstanding in the United States was 178.8 billion dollars.[5] This total represents approximately fifty million separate consumer credit transactions.[6] The transaction involved in this case is in all respects indistinguishable from a large portion of this total.

[5] Finance Facts Yearbook 1977, at 45 (Table 18). By June of 1978, total consumer instalment credit outstanding had increased to 237.2 billion dollars. 9 Fed. Res. Bull. A42 (Table 1.55) (Sept. 1978).

[6] Although no exact statistics are available as to the total number of transactions involved, an approximation may be made. In December, 1976 the average size of instalment contracts for new auto purchases were $5,369; for used autos the average was $2,697. Finance Facts Yearbook 1977, at 46. The average size of personal loans made was $1,369. Id., at 47. Averaging these averages would give a transaction average of $3,145. Dividing the 178.8 billion dollar total by that average would give a figure of over 56,000,000 transactions. While that figure is an estimate, it is clear that the total number of consumer finance transactions outstanding in the United States that are covered by the Truth in Lending Act exceeds fifty million.

While conceived as a simple statute to require uniform statements of credit costs so that consumers could "comparison shop" for credit, the Truth in Lending Act has developed into a highly technical statute often difficult to apply to diverse credit transactions. Its application to varying factual situations resulted in the issuance of Regulation Z by the Board, which was charged by Congress with the responsibility for the interpretation of the Act and, along with the Federal Trade Commission, with its enforcement. The Board and its staff have also issued hundreds of formal and informal interpretations and opinions relating to the Act and the Regulation and their application to various practical factual problems. Relying upon these guidelines and the requirements of the Act and the Regulation, sellers and lenders have developed printed forms that have been used in the millions of transactions subject to the Act each year.

When, as here, a lender complies in good faith with all of the requirements of the Act and Regulation Z as interpreted by the Board in light of state commercial law, it should not be subjected to liability upon the basis of a questionable theory that accomplishes little more than a windfall for litigants and their lawyers and a disruption of established lending practices. In a highly regulated area such as this, the parties should be allowed to rely upon the requirements of the Act and Regulation Z as interpreted by the Board. The Court has an opportunity in this case to confirm this basic principle in the context of issues that affect virtually every consumer credit transaction.

The particular disclosure at issue in this case can be revised, of course, although the revision of future forms will not prevent the application of this novel decision to the millions of identical forms already used. But the Fifth Circuit's opinion in *Edmondson* has opened the door for

the assertion that *any* creditor's right must be disclosed as a security interest—since virtually any such right can be characterized as a "valuable economic right." Lenders will, of course, disclose *every* economic right to avoid claims; borrowers will have to try to make some sense out of an even *more* crowded and confusing disclosure form, which will bury the information they really need—what property will be reached in the event of a default—in a maze of confusing description.

Moreover, if allowed to stand, *Edmondson* will spawn endless litigation disputing whether all sorts of creditors' rights, whether incidental or not, are "security interests". The statute, Regulation Z and the Board's interpretations made clear what needed to be disclosed in this case. In going beyond these requirements the Fifth Circuit has only obfuscated and complicated what was intended to be a clear and meaningful disclosure.

The number of truth in lending cases has already swollen to record levels,[7] fostered in part by judicial interpretations of the Truth in Lending Act which accepted strained or tortured construction of the Act's requirements. The decision in this case can only lead to further purposeless litigation, because it turns compliance into a guessing game and places in jeopardy billions of dollars of consumer financing —all without furthering the objective of truth in lending.

[7] From statistics released by the Administrative Office of the U.S. Courts, the *Washington Credit Letter,* November 13, 1978, reported: "During the 12 months ending June 30, 1978, 1957 (new truth in lending) suits were filed (in U.S. District Courts), a 372 percent increase over the year ending June 30, 1972 (the first year in which separate figures were compiled)." Of the 1957 new cases filed, 725 or 37% were in the Fifth Circuit. As it has in every year since 1972, the Fifth Circuit has led all Circuits by a large margin having more than twice as many new truth in lending cases filed as the circuit having the next highest number (The Second Circuit had 300 new cases filed).

CONCLUSION

For all of the reasons heretofore stated, we urge the Court to grant a writ of certiorari to review the judgment and opinion in this case so that the Court may adopt a standard of interpretation which introduces some certainty and stability into this important sector of the American credit economy.

Respectfully submitted,

LEVINE & D'ALESSIO, P.A.
MORTON P. LEVINE
BURGESS W. STONE
2415 The Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303
(404) 521-1624
Attorneys for Petitioner

Of Counsel:

SCHIFF HARDIN & WAITE
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-1000

January 3, 1979

APPENDIX

OPINION OF THE COURT OF APPEALS
JULY 28, 1978

IN THE UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 76-3773

CATHERINE EDMONDSON,
Plaintiff-Appellee,

v.

ALLEN-RUSSELL FORD, INC.,
Defendant,

and

FORD MOTOR CREDIT COMPANY,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division

No. C75-940A—Newell Edenfield, *Judge*

Decided July 28, 1978

Rehearing and Rehearing En Banc Denied October 6, 1978

Before WISDOM, GOLDBERG and RUBIN, Circuit Judges.

GOLDBERG, Circuit Judge:

[1] This case, like *Shanks* v. *Greenbriar Dodge, Inc.*, 577 F.2d 296, (5th Cir. 1978), also decided today, requires us to determine whether an assignment of returned or unearned premiums of physical damage insurance must be

disclosed as a security interest under the Truth-In-Lending Act ("the Act"), 15 U.S.C.A. §1638(a)(10) (1974),[1] and Regulation Z, 12 C.F.R. §226.8(b)(5).[2] We hold that such assignments do constitute security interests for purposes of Regulation Z and must be disclosed. We further hold that the disclosure here was inadequate to meet the requirements of Regulation Z and the Act.

[1] Section 1638(a) provides in pertinent part:

In connection with each consumer credit sale not under an open end credit plan, the creditor shall disclose each of the following items which is applicable:

. . . (10) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

[2] Section 226.8(b) provides in pertinent part:

Disclosures in sale and nonsale credit. In any transaction subject to this section, the following items, as applicable, shall be disclosed:

. . . (5) A description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify. In any such case where a clear identification of such property cannot properly be made on the disclosure statement due to the length of such identification, the note, other instrument evidencing the obligation, or separate disclosure statement shall contain reference to a separate pledge agreement, or a financing statement, mortgage, deed of trust, or similar document evidencing the security interest, a copy of which shall be furnished to the customer by the creditor as promptly as practicable. If after-acquired property will be subject to the security interest, or if other or future indebtedness is or may be secured by any such property, this fact shall be clearly set forth in conjunction with the description or identification of the type of security interest held, retained or acquired.

The facts in this case are straightforward. On April 24, 1975, plaintiff-appellee Catherine T. Edmondson entered into an "Automobile Retail Instalment Contract" with defendant Allen-Russell Ford, Inc. ("Allen-Russell") for the purchase of a used 1970 MG Midget automobile. The contract was subsequently assigned by Allen-Russell to defendant-appellant Ford Motor Credit Co. ("Ford"). The contract included on its face a disclosure statement as required by the Truth-In-Lending Act. Plaintiff brought suit on May 19, 1975 alleging that defendants[3] had failed to comply with the disclosure requirements of the Act and Regulation Z in several respects. Following cross-motions for summary judgment, the case was referred to Bankruptcy Judge Ezra Cohen, sitting as special master. The special master made recommendations on four issues. The district court, "find [-ing] itself in agreement with the special master's conclusion that the defendant failed to disclose the fact that it asserted a security interest in returned or unearned premiums of the automobile insurance" in violation of 12 C.F.R. §226.8(b)(5), adopted the special master's recommendation on that issue and awarded the plaintiff judgment in the amount of $1000 and $900 in reasonable attorney's fees against defendant Ford. It is from this order of final judgment, founded solely on the return or unearned insurance premium issue, that Ford now appeals.

Two provisions from the combined disclosure statement and installment contract are important in the resolution of this case. Paragraph 13 on the face of the disclosure statement provides as follows:

> (13) Security Interest: Seller shall have a security interest under the Uniform Commercial Code in the Property (described above)[4] and in the proceeds there-

[3] Defendant Allen-Russell was voluntarily dismissed from this suit and is not a party to this appeal.

[4] The Property is defined as a used 1970 MG Midget and identified by serial number.

of to secure the payment in cash of the Total of Payments and all other amounts due or to become due hereunder.

The reverse side of the document, headed "Additional Terms and Conditions," provides in paragraph 18[5] that

[5] The full text of paragraph 18 is as follows:

RISK OF LOSS—INSURANCE

The Property shall be at Buyer's risk. Buyer shall obtain and maintain at his own expense for so long as any amount remains unpaid hereunder insurance protecting the interests of Buyer and Seller against loss, damages or destruction of or to the Property in such forms and amounts as Seller may require. The inclusion of a charge for insurance herein shall not relieve Buyer of such obligation but only authorizes Seller to attempt to obtain the requested coverages on Buyer's behalf through an authorized agent; provided, if Seller is unable to obtain the requested coverages for the term indicated for the amount included herein, Seller may (i) obtain such coverages for such term, if any, as the insurance carrier to whom Seller shall apply therefor will provide for such amount, or (ii) credit such amount to the final maturing instalments hereunder in inverse order of maturity or as otherwise required by law.

If Buyer fails to obtain or maintain such insurance, or fails to furnish satisfactory evidence thereof upon request, Seller may, but shall not be required to, and without prejudice to his rights hereunder if he does not, obtain such insurance protecting either the interests of Buyer and Seller or the interests of Seller only. In such event, Buyer agrees to reimburse Seller for the cost thereof forthwith upon demand together with interest thereon at the highest lawful contract rate.

Buyer hereby assigns to Seller any monies payable under such insurance by whomever obtained, including returned or unearned premiums, and Seller hereby is authorized on behalf of both Buyer and Seller to receive or collect same, to endorse checks or drafts in payment thereof, to cancel such insurance or to release or settle any claim with respect thereto. The proceeds from such insurance, by whomever obtained, shall be applied toward replacement of the Property or payment of the indebtedness hereunder in the sole discretion of Seller. (Emsis added.)

> Buyer hereby assigns to seller any monies payable under such insurance, by whomever obtained, including returned or unearned premiums. . . . The proceeds from such insurance, by whomever obtained, shall be applied toward replacement of the Property or payment of the indebtedness hereunder in the sole-discretion of Seller.

Appellant contends, primarily, that the assignment created by paragraph 18 does not constitute a security interest and therefore need not be disclosed and, secondarily, that if the assignment is held to constitute a security interest, it is adequately disclosed in paragraph 13 on the face of the contract. We reject both contentions.

I. *Creation of a Security Interest*

Appellant's first argument seems to be that because the returned or unearned insurance premiums are "assigned," they cannot be the subject of a security interest. Appellant further devotes considerable effort to an analysis of the Uniform Commercial Code as enacted in Georgia to establish that assignments of proceeds of insurance are excluded from treatment as "security interests" under Georgia law.

Fortunately we need not tarry long over the complexities of Georgia's commercial law, for appellant's argument has been anticipated by a recent decision of this court. In *Elzea* v. *National Bank of Georgia,* 570 F.2d 1248 (5th Cir. 1978), we considered whether an assignment of homestead and exemption rights constituted a security interest for purposes of Regulation Z. Our discussion in *Elzea* is precisely apposite here:

> The Truth-in-Lending Act requires a creditor to disclose a "description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit." 15 U.S.C. §1639(a)(8).

> Regulation Z, promulgated by the Federal Reserve Board pursuant to authority granted in the Act, defines "security interest" and "security" to "mean any interest in property which secures payment or performance of an obligation." 12 C.F.R. § 226.2(gg). The definition also lists some interests in property that are security interests. The assignment in this case, although not specifically listed, is a security interest because it is an interest in property which secures payment of an obligation.

570 F.2d at 1249. Regulation Z itself provides that the terms "security interest" and "security" "include, but are not limited to, security interests under the Uniform Commercial Code . . . ." 12 C.F.R. 226.2(gg).[6] We stressed in *Elzea* that technical characterizations "are not determinative of whether a creditor holds a security interest under Regulation Z's definition." *Id.* at 1249-50. Rather, "[t]his question should be answered by examining the rights which the creditor has." *Id.* at 1250. We noted as significant factors whether the creditor has an interest in property and whether "the assignment helps to secure payment of the obligation." *Id.* Even property which "cannot presently be identified and may not yet exist" may be the subject of

[6] Section 226.2(gg) provides as follows:

> "Security interest" and "security" mean any interest in property which secures payment or performance of an obligation. The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialmen's, artisan's, and other similar liens, vendor's liens in both real and personal property, the interest of a seller in a contract for the sale of real property, any lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

a security interest for Regulation Z purposes. "What is important is that the . . . privilege is valuable to the debtor and he has given up this valuable privilege to the extent of his debt." *Id.*

[2] The application of these principles to the facts of this case presents no difficulty; indeed, we believe this case follows a *fortiori* from *Elzea*. Viewing the economic reality of the transaction, we have no doubt that the right to unearned property insurance premiums can be a valuable economic right. Appellant's brief itself points out that "[p]ractically every secured loan is affected by insurance" and that an "assignment of returned or unearned premiums of insurance appears in virtually all consumer paper secured by property when insurance is required." Appellant's Brief at 17. We think it clear beyond peradventure that the assignment of returned or unearned premiums of physical damage insurance confers on the creditor an interest in property which helps to secure payment or performance of contractual obligations. The creditor is expressly granted "sole discretion" to apply returned premiums toward payment of the indebtedness; this discretion may, of course, be exercised in the event of default. The creditor may also apply the returned premiums toward substitute insurance on the property, thereby securing the debtor's contractual obligation to obtain and maintain insurance on the vehicle. *See* note 5, *supra*. The assignment thus meets the established definition of a security interest and must be disclosed. As the special master stated, "If the security interest was important enough for defendant to acquire, it was important enough to disclose."

[3] In a decision closely on point, *Gennuso* v. *Commercial Bank & Trust Co.*, 566 F.2d 437 (3rd Cir. 1977), *rev'g* 425 F.Supp. 461 (W.D.Pa.1976), the Third Circuit recently held

that a clause[7] containing an assignment of "any return of unearned premiums" 'create[s] a security interest in the proceeds and unearned premiums of the insurance policy covering the automobile." 566 F.2d at 440 n.2. We have recently noted the desirability of uniformity in the interpretation of truth-in-lending disclosure requirements, *see* ***McDaniel*** **v.** ***Fulton National Bank of Georgia,*** 571 F.2d 948, 951 (5th Cir. 1978) (en banc), and observe that our result is consistent not only with the decision of the Third Circuit but with the result suggested by a Federal Reserve Board staff interpretation of a closely analogous issue. *See* FRB Public Position Letter No. 377 (July 22, 1970).[8] Neither

[7] The language of that clause is set forth in full in the district court opinion. 425 F.Supp. at 466 n.10. We see no relevant distinction between that language and the language of paragraph 18 in the instant contract. In the *Gennuso* case, the district court found the clause to create a security interest, but believed the interest to be adequately disclosed. The Third Circuit agreed with the district court's determination that a security interest was created, but reversed on the adequacy of disclosure.

[8] The full text of Public Position Letter No. 377 is as follows:

Sec. 226.4(a) Proceeds of loan used to pur-
226.8(b) chase insurance.
226.8(c)

July 22, 1970

As we understand the proposed plan, your client proposes to place literature in its loan offices concerning insurance to be sold by a company unrelated to your client. Applications for a single premium lifetime accidental death and dismemberment policy are available in each office and if a customer desires to purchase such a policy with the proceeds of his loan, a check will be sent directly to the company from your client in payment of the premium. While your client will not require the purchase of this insurance and the proceeds of the policy would in no circumstances be used to pay any portion of an unpaid balance of the loan, your client would be designated as owner of

principle nor precedent nor other persuasive authority supports exclusion of interests in returned insurance premiums from the disclosure requirements of Regulation Z.

II. *Adequacy of Disclosure*

Appellant Ford's second argument is that if a security interest was created, this security interest "is a part of the proceeds of the insurance proceeds and consequently a part of the proceeds of the 1970 MG automobile which were properly disclosed." Appellant's Reply Brief at 7. As appellant would have it, A is included in B, B is included in C, therefore A is included in C. We find this application of the transitivity principle inconsistent with the logical and policy foundations of the Act. Appellant's A's, B's, and C's cannot prevail over the commands of Regulation Z.

[4-6] The "proper disclosure," in the view of appellant, was that given in paragraph 13 on the face of the disclosure statement: "Seller shall have a security interest under the Uniform Commercial Code in the Property (described above) and in the proceeds thereof . . ."[9] *See* text at note

the policy during the term of the loan. In the event of the customer's default, your client would have the right to cancel the policy and apply any premium refund to the unpaid balance of the loan.

Under the circumstances, we think it would be appropriate to disclose the loan company's ownership of the policy as a type of "security interest" under Section 226.8(b)(5) and disclosures need not be made under Section 226.4(a)(5). The amount of the premium would not be included in the "finance charge" nor would it be disclosed as an "other charge."

Tynan Smith
Assistant Director

[9] The creditor neither contends, nor could it contend, that paragraph 18, which creates the security interest and is found on the

4, *supra*. Regulation Z, § 226.8(b)(5), provides that each lender must describe or identify "the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates . . . ." We have held that under this regulation, a lender must disclose the type of security interest held, retained, or acquired and the property of the borrower which serves or will serve as the collateral. *Anthony* v. *Community Loan & Investment Corp.*, 559 F.2d 1363, 1366 (5th Cir. 1977). Reference to a "security interest under the Uniform Commercial Code" has been held to be a sufficient description of a type of security interest as required by 12 C.F.R. § 226.8(b)(5). *See id.* at 1367, Elzea, *supra*, 570 F.2d at 1251; FRB Official Staff Interpretation Letter of November 22, 1976, 1976 CCH Cons.Cred. Guide ¶ 31,491. The question here is whether the reference to the MG Midget "and the proceeds thereof" is sufficient to constitute a "clear identification" of returned or unearned insurance premiums. The *Gennuso* court, in finding the disclosure in that case to be inadequate, focused on the stated purpose of the Truth-In-Lending Act, 15 U.S.C.A. § 1601, "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." 566 F.2d at 441. In passing the Act, Congress saw fit to require disclosure not only of the direct costs of credit, but of other terms of

reverse side of the document, satisfies the disclosure requirement of Regulation Z. So far as relevant here, required disclosures must be made together "on the *same side of the page* and above the place for the customer's signature." 12 C.F.R. § 226.8(a)(1) (emphasis added). *See Gennuso, supra*, 566 F.2d at 441-42 and n. 13; *see generally Charles* v. *Krauss Company, Limited*, 572 F.2d 544 (5th Cir. 1978).

credit as well, specifically including the existence of security interests. 15 U.S.C.A. § 1638(a)(10); *see also* §§ 1637(a)(7), 1639(a)(8). We must assess the adequacy of disclosure, at least in part, by the audience for which disclosure was intended. We cannot imagine that to an audience composed of ordinary laypersons engaged in consumer credit transactions, the contractual reference to the property and the proceeds thereof could mean more than the car itself and substitutes for the car received on its sale, exchange, or other disposition.[10] Indeed, the interpretation of the contractual terms sought by appellant would require a sesquipedalian stretch beyond the capacity of even the legal savant. We countenance no such double-talk here. Returned or unearned premiums are in no sense a substitute for the specified collateral, the MG Midget, and cannot be held to constitute its proceeds. As the special master put it, "These premiums might be proceeds of the insurance policy, but they are not proceeds of the car." We have examined the words of Ford's disclosure under every model from A to T, but fail under each to find compliance with the requirements of Regulation Z.

III. *Statutory Damages*

The district court, finding a violation of the Act and of Regulation Z, awarded plaintiff $1,000 in damages and $900 in attorney's fees. Appellant notes that the Act provides for civil liability in the amount of twice the finance charge, but in no event less than $100 nor more than $1,000. 15 U.S.C.A. § 1640. As disclosed by the contract, the

[10] Georgia has recently amended its definition of "proceeds" under the U.C.C. to provide specifically that "Insurance payable *by reason of loss or damage to the collateral* is proceeds . . ." Ga. Code Ann. § 109A-9-306. (Acts 1978, eff. July 1, 1978) (emphasis added). This provision is in full accord with our reading of the contractual language.

finance charge in this case was only $282.57, so that the maximum amount of civil liability would be $565.14, plus reasonable attorney's fees. The plaintiff has already received in settlement from a co-defendant, Allen-Russell Ford, Inc., one-half of the civil liability in the amount of $282.57 and claimed only the balance in the amount of $282.57 in her Motion for Summary Judgment. Plaintiff concedes that she is entitled only to statutory damages of $282.57 plus reasonable attorney's fees of $900. The judgment is modified accordingly, and, as modified, affirmed.

JUDGMENT MODIFIED AND, AS MODIFIED, AFFIRMED.

ORDER OF THE COURT OF APPEALS
JULY 28, 1978

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 76-3773

D. C. Docket No. CA 75-940A

CATHERINE EDMONDSON,

Plaintiff-Appellee,

versus

ALLEN-RUSSELL FORD, INC.,

Defendant,

FORD MOTOR CREDIT COMPANY,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Georgia

Before WISDOM, GOLDBERG and RUBIN, *Circuit Judges.*

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel:

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed, as modified in accordance with the opinion of this Court:

It is further ordered that defendant-appellant pay to plaintiff-appellee, the costs on appeal to be taxed by the Clerk of this Court.

July 28, 1978

Issued As Mandate:

ORDER OF THE COURT OF APPEALS
OCTOBER 6, 1978

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TO ALL PARTIES LISTED BELOW:

NO. 76-3773—CATHERINE EDMONDSON vs.
ALLEN-RUSSELL FORD, INC.,
FORD MOTOR CREDIT COMPANY

Dear Counsel:

This is to advise that an order has this day been entered denying the petition ( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition ( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,
EDWARD W. WADSWORTH, Clerk

By /s/ SALLY HAYWARD
Deputy Clerk

cc: Messrs. Morton P. Levine
James R. Beach
Mr. Jay E. Loeb

ORDER OF THE DISTRICT COURT
AUGUST 27, 1976

IN THE
UNITED STATES DISTRICT COURT
Northern District of Georgia
Atlanta Division

CATHERINE EDMONDSON,
Plaintiff,
vs.
ALLEN-RUSSELL FORD, INC. and FORD MOTOR CREDIT COMPANY,
Defendants.
} CIVIL ACTION NO. C75-940A

ORDER

This truth in lending action is before this court for review of the special master's recommendation of April 29, awarding judgment in favor of the plaintiff in the amount of $1,000 against defendant Ford Motor Credit Co. and of his recommendation of May 14, awarding the plaintiff $900 in reasonable attorney's fees. Also before this court is the master's recommended dismissal of the complaint as it relates to Allen-Russell Ford, Inc.

Upon review of the record, the court finds itself in agreement with the special master's conclusion that the defendant failed to disclose the fact that it asserted a security interest in returned or unearned premiums of the automobile insurance. Such a failure to dissolve is a violation of 12 C.F.R. 226.8(b)(5). The court therefore ADOPTS the special master's recommendation on this issue and AWARDS the plaintiff judgment in the amount of $1,000 and $900 in reasonable attorney's fees against de-

fendant Ford Motor Credit Company and DISMISSES the complaint as it relates to defendant Allen-Russell Ford, Inc.

So ORDERED, this 27th day of August, 1976.

/s/ NEWELL EDENFIELD
NEWELL EDENFIELD
United States District Judge

RECOMMENDATION OF SPECIAL MASTER
APRIL 29, 1976

IN THE
UNITED STATES DISTRICT COURT
For the Northern District of Georgia
Atlanta Division

CATHERINE EDMONDSON,
Plaintiff,
vs.
ALLEN-RUSSELL FORD, INC. and FORD MOTOR CREDIT COMPANY,
Defendants.

CIVIL ACTION NO. C75-940A

RECOMMENDATION OF SPECIAL MASTER

Before the Court is an earlier recommendation of the dismissal of Allen-Russell Ford, Inc. pursuant to settlement agreement. Also before the Court are motions for summary judgment by plaintiff and defendant Ford Motor Credit Company.

Plaintiff's first contention centers on the undisclosed acceleration clause. That clause provides that on default, "Seller shall have the right to declare all amounts due or to become due hereunder to be immediately due and payable." This is clearly an undisclosed default charge. *Whitehead* v. *Harry White Ford,* C75-695A (Freeman, J. 1976).

Plaintiff's second contention is that the defendant violated the Act by failing to itemize the finance charge even though the finance charge is composed of only a single element. In the case of a credit sale of goods, such as in the

case at bar, that single element is called time price differential. In the case of a loan, that single element is called interest.

With respect to both credit sales and credit loans, Regulation Z requires disclosure of "the total amount of the finance charge with description of each amount included, using the term finance charge." Regulation Z § 226.8(c)(8) and (d)(3). This is not the clearest language. It does not appear to contemplate the single-element finance charge. It is at least ambiguous as to whether the finance charge must have a dual label when composed of a single element.

Very early in the history of truth in lending, in 1969, a pamphlet was published entitled *What You Ought to Know about Truth in Lending*. The pamphlet stated: "Material in this pamphlet has been prepared by the Board of Governors of the Federal Reserve System." Attached are relevant portions of that pamphlet. The Board gave very clear examples in Exhibits A, B, C and D, that where the finance charge contained a single element, the label "finance charge" alone should be used to describe that element. This pamphlet was issued before any contrary court decisions.

It is true that the pamphlet should not be totally relied upon as a substitute for the regulation, for business transactions and state law vary. But no such variation could affect the accuracy of the portrayal of the single label "Finance Charge."

Furthermore, in staff position letter No. 682, dated April 25, 1973, it was stated that only the single label "Finance Charge" was to be given to the single element finance charge and that to give a dual label could obscure the clear impact of the disclosure of finance charge and therefore be misleading and confusing. Attached hereto is a copy of that letter.

This district has never spoken on the issue of whether the single element finance charge should be given a dual label. But it has approved many disclosure statements where only the single label was given to the single element finance charge.

There is in this district one recommendation which treated the point. In *Paer* v. *First National Bank of Tucker*, C74-1402A, as a second reason for holding for the plaintiff, the Special Master noted that authority in other districts and staff letters required itemization of the finance charge even though composed of a single element, interest. The Special Master was correct in his citations of authority from other districts, but he did not cite staff position letter No. 682. In any event, that recommendation did not become precedent. Judge Freeman entered judgment on the recommendations because they were unopposed.

This Special Master notes the alternate holdings clearly supporting plaintiff's contentions in *Ives* v. *W. T. Grant Company*, 522 F.2d 749 (2nd Cir. 1975); *Ljepava* v. *M.L.S.C. Properties, Inc.*, 511 F.2d 935 (9th Cir. 1975); *Johnson* v. *Associates Finance, Inc.*, 369 F.Supp. 1121 (S.D. Ill. 1974); *Myers* v. *Clearview Dodge Sales, Inc.*, 384 F.Supp. 722 (E.D. La. 1974). This Special Master also notes that each of these decisions rules contrary to the law of this District on other points.

About four months after the decision in *Ives* v. *W. T. Grant, supra,* the Board of Governors promulgated an interpretive ruling that there is no need for description or identification where the finance charge is composed of a single element. Attached hereto is a copy of that ruling.

Now this Special Master does not recommend giving weight to letters written by Federal Reserve Board staff employees criticizing court decisions. *Willis* v. *Town*

Finance Corp. of Atlanta, C74-1489A (Moye, J.). But this Special Master thinks courts should be reluctant to declare that settled and consistent interpretations of the Board are erroneous. *Philbeck* v. *Timmers Chevrolet Company,* 499 F. 2d 971 (5th Cir. 1974).

Plaintiff contends that the Board's Interpretive Ruling is plain wrong. Plaintiff goes to the Act itself and cites 15 USC 1638(a)(6). That section provides that a creditor must disclose:

> . . . the amount of the finance charge, which may in whole or in part be designated as a time price differential or any similar term to the extent applicable.

With the permissive "may" this section certainly does not stand unambiguously in support of plaintiff's contention.

Plaintiff argues that legislative history of the Truth in Lending Act supports his contentions. But to the Special Master, the Regulations and interpretations of the Board are much more important in fixing the meaning of the Act. The Act delegates to the Board the power to make regulations containing:

> . . . such classifications, differentiations, or other provisions, and may provide for such adjustment and exceptions for any class of transactions as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. 15 USC 1604.

The Act also provides:

> Regulations of the Board need not require that disclosures pursuant to this part be made in the order set forth in this part, and may permit the use of terminology different from that employed in this part if it conveys substantially the same meaning. 15 USC 1632.

As Judge Edenfield noted in *Roberts* v. *National School of Radio & Television Broadcasting,* 374 F.Supp. 1266, 1269 (N.D. Ga. 1974)

> The Supreme Court has only recently observed that the authority and expertise which the Federal Reserve Board exerts in developing the enforcement provisions of the TIL is nearly absolute *Mourning* v. *Family Publications Service, Inc.,* 411 U.S. 356, . . . (1973).

Since the Board has stated its interpretation first and since this District Court has not held to the contrary, this Special Master concludes that the single label, "Finance Charge," is sufficient where the finance charge contains only a single element.

Plaintiff's third contention is that defendant failed to disclose its security interest in insurance proceeds, unearned insurance premiums, and personalty left in the car after repossession. Regulation Z § 226.8(b)(5) requires a clear identification of the property to which the security interest relates. The disclosed clause shows a security interest in the car "and in the proceeds thereof." The undisclosed clause dealing with property damage insurance to be obtained by Buyer for the protection of the interest of buyer and seller, reads:

> Buyer hereby assigns to Seller any monies payable under such insurance, by whomever obtained, including returned or unearned premiums, and Seller hereby is authorized on behalf of both Buyer and Seller to receive or collect same, to endorse checks or drafts in payment thereof, to cancel such insurance or to release and settle any claim with respect thereto. The proceeds from such insurance, by whomever obtained, shall be applied toward replacement of the property or payment of the indebtedness hereunder in the sole discretion of seller.

First, let us deal with insurance proceeds in case of damage to the car. The question is whether those insurance proceeds are encompassed in the disclosed security interest in the car "and in the proceeds thereof." This Special Master concludes that proceeds from the involuntary, as well as the voluntary, disposition of the car are encompassed. Ga. Code Ann. § 109A-9-306; *PPG Industries, Inc.* v. *Hartford Fire Insurance Co.*, 384 F. Supp. 91 (S.D. N.Y. 1974); *Fireman's Fund American Ins. Co.* v. *Ken-Lori Knits, Inc.*, 399 F. Supp. 286 (E.D. N.Y. 1975). The equation of voluntary and involuntary disposition is ancient in the law. This is revealed in the well-known history of the relationship between the common law actions of trover and conversion on the one hand and assumpsit on the other. Where property was tortiously disposed of, the injured party could presume that the wrongdoer had promised to buy it. Thus, the injured party could waive the tort and sue assumpsit.

The next question is whether the defendant took a security interest in returned and unearned premiums for property damage insurance. The undisclosed clause states the buyer's interest is assigned. The last sentence of that clause speaks of use of the insurance proceeds to pay the debt. In the contract, insurance proceeds appear to include returned and unearned premiums. Thus, there is an assigned for purpose of security.

Now, the question is whether returned or unearned premiums from property damage insurance are included in the disclosed security interest in the car "and the proceeds thereof." There is no precedent known to the Special Master on this point. This Special Master concludes that those premiums are not included in that disclosed security interest. Those premiums might be proceeds of the insurance policy, but they are not proceeds of the car.

Thus, the defendant has failed to disclose its security interest in returned and unearned premiums of property damage insurance. The next question is whether this violation is so minimal that it should be disregarded. The answer is no. If the security interest was important enough for defendant to acquire, it was important enough to disclose.

With regard to personal property, an undisclosed clause of the contract provides:

> Any personalty in or attached to the Property when repossessed may be held by Seller without liability and buyer shall be deemed to have waived any claim thereto unless written demand by certified mail is made upon Seller within 24 hours after repossession.

This clause is not a part of any clause dealing with indebtedness. It does not create a security interest in the personalty to secure payment of the debt.

WHEREFORE, it is recommended that plaintiff's motion for summary judgment be granted and that plaintiff have judgment in the amount of $1,000 plus reasonable attorneys fees.

Plaintiff's attorney is directed to submit within ten days an affidavit of legal services.

This 29th day of April, 1976.

/s/ Ezra H. Cohen
Ezra H. Cohen
BANKRUPTCY JUDGE,
Sitting as Special Master

(Note: Exhibits omitted in printing.)

ACCOUNT NO. 2175 **AUTOMOBILE RETAIL INSTALMENT CONTRACT** DATE 4/24/75

Buyer (and Co-Buyer) - Name and Address (Include - County and Zip Code)

Catherine T. Edmondson
5675 Roswell Rd. Apt # 53 H
Alanta, Ga. 30342

Seller - Name and Address

ALLEN-RUSSELL FORD, INC.
5920 Roswell Road
Atlanta, Georgia 30328

Buyer (which means the undersigned Buyers and Co-Buyers, jointly and severally) having been quoted both a time sale price and a lower cash price hereby purchases from Seller on a time price basis, upon the terms and conditions set forth on the face and reverse side hereof, the following property (hereinafter called the "Property") delivery and acceptance of which in good order hereby are acknowledged by Buyer.

New or Used	Year and Make	Series	Body Style	No. Cyl.	If Used, Trade-In Company	Manufacturer's Serial Number	Use For Which Purchased
U	70 MG	Midget	Conv.	4		[redacted] GAN5UA83829-G	☒ Personal ☐ Business ☐ Agriculture

INCLUDING: ☐ Radio ☐ Air Conditioner ☐ Automatic Transmission ☐ Power Steering ☐ Power Brakes ☐ Power Seats ☐ Power Windows ☐

DESCRIPTION OF TRADE IN

70 Ford T-Bird (Year and Make) $ 1395.00 (Gross Allowance)

$ N.A. (Amount Owing) (Serial Number)

OPTIONAL INSURANCE

Buyer authorizes Seller to obtain the following insurance coverages:

(a) Physical Damage Insurance: Coverages checked below for a term of ____ months (or for such shorter term as the insurer to whom Seller shall apply therefor will provide for the amount included herein) from the date hereof, payable to Buyer or Seller as interests may appear:

☐ Comprehensive ☐ Fire-Theft & Combined Additional Coverage $ N.A. (a)

☐ $ ____ Deductible Collision ☐ Towing & Labor Costs ($25.00 Limit)

(b) Credit Life Insurance on the life of Catherine T. Edmondson (Insured Person) for the term of this Contract.

☐ Provided under Ford Life Insurance Company's Group Policy No. 7200 in accordance with the "Credit Life Insurance Eligibility" section below. $ 20.00 (b)

☐ Provided by FORD LIFE INS. CO. in accordance with the separate Application, Notice, Certificate or Policy delivered to Buyer this date.

(c) Credit Accident and Health or Disability Insurance provided by

FORD LIFE INS. CO.
for the term of this Contract in accordance with the separate Application, Notice, Certificate or Policy delivered to Buyer this date $ 36.19 (c)

(d) Other Optional Insurance (Specify) $ N.A. (d)

Total Cost of Optional Insurance $ 56.19

NOTICE TO BUYER: (1) You are not required to obtain the Credit Life and/or Credit Accident and Health or Disability Insurance for which a charge is indicated above and such is not a factor in the Seller's approval of this credit. (2) You have the right to choose the person through whom the Physical Damage insurance required under this contract is to be obtained. ACKNOWLEDGING the foregoing, BUYER requests and authorizes SELLER to obtain such insurance coverage for which an amount is included above.

Buyer Catherine Edmondson 4/24/75 (Date of Insurance to be included only if signed by Buyer and dated)

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

CREDIT LIFE INSURANCE ELIGIBILITY

Credit life insurance under Ford Life Insurance Company's Group Policy No. 7200 is available only on the life of one natural person who is obligated to make payments under this retail instalment instrument and who is under the age of 66 on the date hereof. Benefits will be limited to a refund of premiums if there is no person eligible for such insurance, or if death results from suicide within one year from the date hereof or from certain pre-existing diseases or conditions within ninety days from the date hereof. For details see Notice of Proposed Group Credit Life Insurance on reverse side of Buyer's Copy.

The foregoing contract hereby is accepted by the Seller and assigned to Ford Motor Credit Company in accordance with the terms of the Assignment set forth on the reverse side hereof.

ALLEN-RUSSELL FORD, INC.

Seller By [signature]

DETAILS OF TRANSACTION

(1) Cash Price		$ 2262.00 (1)
Cash Down Payment	$ N.A.	
Trade-In (See Opposite)	$ 1395.00	
(2) Total Down Payment		$ 1395.00 (2)
(3) Unpaid Balance of Cash Price (Difference between Items 1 & 2)		$ 867.00 (3)
(4) Other Charges		
Optional Insurance (See Opposite)	$ 56.19	
Official Fees	$ N.A.	
Taxes (Not Included in Cash Price)	$ N.A.	
License, Title & Registration Fees	$ N.A.	
Total Other Charges		$ 56.19 (4)
(5) Unpaid Balance - Amount Financed		$ 923.19 (5)
(6) FINANCE CHARGE		$ 282.57 (6)
(7) ANNUAL PERCENTAGE RATE 26.95 %(7)		
(8) Total of Payments (Sum of Items 5 & 6)		$ 1205.76 (8)

(9) Payment Schedule: Buyer hereby agrees to pay to Seller the Total of Payments (Item 8 above) in 24 monthly instalments of $ 50.24 each and one final instalment of N.A. on the like day of each month commencing June 6 19 75 or, if no date is specified, one month after the date of this contract.

(10) Balloon Payment(s) $ [redacted]
(Insert amount of each payment that is more than twice the amount of any otherwise regularly scheduled equal payment)
A balloon payment may be refinanced only upon such terms and conditions as the then parties to this contract may agree as of its due date.

(11) Deferred Payment Price (Sum of Items 1, 4 & 6) $ 2600.76 (11)

(12) Delinquency Charges: Buyer hereby agrees to pay a delinquency charge on each instalment in default for more than 10 days in the amount of 5% thereof or $5.00, whichever is less, plus such expenses incurred by Seller in effecting collection hereunder as may be allowed by law.

(13) Security Interest: Seller shall have a security interest under the Uniform Commercial Code in the Property (described above) and in the proceeds thereof to secure the payment in cash of the Total of Payments and all other amounts due or to become due hereunder.

(14) Prepayment Rebate: Buyer may prepay his obligations under this contract in full at any time prior to maturity of the final instalment hereunder, and, if he does so, shall receive a rebate of the unearned portion of the Finance Charge computed under the sum of the digits method after first deducting an acquisition fee of $25.00. No rebate will be made if the amount thereof is less than $1.00.

(15) Additional Terms and Conditions: The additional terms and conditions set forth on the reverse side hereof are a part of this contract and are incorporated herein by reference.

NOTICE TO THE BUYER

Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign.

Buyer acknowledges receipt of a true and completely filled in copy of this contract at the time of signing.

Buyer Catherine Edmondson

Buyer

FOR SELLER'S USE ONLY

INSURANCE COVERAGE (TO BE COMPLETED, IF PHYSICAL DAMAGE INSURANCE IS NOT INCLUDED IN THE ABOVE CONTRACT.)

NAME OF INSURANCE AGENT Amica Mutual Ins Co (Jim Dodd Ag.) TELEPHONE NO. 325-5600

ADDRESS OF INSURANCE AGENT 50 Executive Park Alanta, Ga.

NAME OF INSURANCE COMPANY ____ POLICY NO. ____

CHECK COVERAGES

☐ Comprehensive ☐ $ ____ Deductible Collision ☐ Fire-Theft & Combined Additional Coverage

SALESMAN ____ (Please Print or Type Name)

KEY-1	KEY-6	OD	HP

SFS 11210 PREVIOUS EDITIONS MAY NOT BE USED

ORIGINAL

ADDITIONAL TERMS AND CONDITIONS

14. ASSIGNMENT
[redacted]

15. USE OF PROPERTY - WARRANTIES
[redacted]

16. RISK OF LOSS - INSURANCE
[redacted]

17. DEFAULT
[redacted]

18. GENERAL
[redacted]

GUARANTY

For Value Received, each of the undersigned guarantors, jointly and severally, guarantees the prompt and unconditional payment, performance and discharge of all Buyer's obligations under the within contract and co-assents that in the event of default of said obligations by Buyer, any notice or demand the full amount of said obligations unpaid hereunder together with a reasonable attorney's fee (15% of the amount then due, or if prohibited, the maximum permitted by law) if placed with an attorney for collection, may be immediately made or instituted against the undersigned without the necessity at the time of payment of the said contract, or any change in the manner, place or terms of payment thereof, or the release, settlement or compromise of any with any party liable for the payment thereof, or the release or non-perfection of any security thereunder. The holder of the within contract shall not be required to exhaust its recourse against Buyer or any other person or any security that it may have at any time before being entitled to payment from the undersigned hereunder. Each of the undersigned guarantors hereby waives notice of the acceptance of this guaranty and of presentment, demand and protest and notices of non-payment and dishonor, and any other demands and notices required by law, and waives all setoffs and counterclaims.

Guarantor ____ Address ____

Guarantor ____ Address ____

ASSIGNMENT

The Seller named on the face of this contract sells, assigns, and transfers to Ford Motor Credit Company (hereinafter called "FMCC") his, its or their entire right, title and interest in and to the within contract and the Property described therein and authorizes FMCC to do every act and thing necessary to collect and discharge obligations arising out of or included in said contract and assignment. In order to induce FMCC to accept assignment of the contract, Seller represents to the Buyer named therein that it is genuine, legally valid and enforceable and arose from the sale of said Property; said Property and Seller made all disclosures required by law prior to the execution thereof by Buyer; the Property is not a motor vehicle required to be registered, and the last of the Seller's obligations required by said contract to be performed has been completed; the information contained in the contract was true and correct as of the date it was executed by Buyer and furnished to FMCC by the Seller and was true and correct as of the date Seller purchased the same; Seller has good title to said Property and a lawful cash price the within contract was complete in all respects and Seller made all disclosures required by law prior to the execution thereof by Buyer; the Property is not a motor vehicle required to be registered, and the last of the Seller's obligations required by said contract to be performed has been completed; the information contained in the contract was true and correct as of the date it was executed by Buyer and furnished to FMCC by the Seller and was true and correct as of the date Seller purchased the same; Seller has good title to said Property and a lawful cash price the within contract sells for; Seller has the right to assign said Property free and clear of all liens and encumbrances and the Seller has not done any act which would impair the validity or collectibility of the contract; title to said Property is vested in the Seller free of all liens and encumbrances except as shown on the face hereof; Seller will defend the same against the claim of any person; and will execute such certificates of title, affidavits, and other documents as may be required to enable FMCC or the Seller to obtain a certificate of title to said Property showing no lien or encumbrance for the benefit of FMCC or the Seller has been or will be applied for forthwith if permitted by law. If there is any breach of any of the foregoing warranties, without regard to the Seller's knowledge or lack of knowledge with respect thereto or FMCC's reliance thereon, the Seller hereby agrees unconditionally to purchase said contract from FMCC upon demand, for the full amount then owed thereon, whether said contract shall be in default or not. Seller further agrees that in event Buyer, or any other person makes a claim against FMCC alleging facts which, if true, would constitute a breach of any of the foregoing warranties, Seller shall assume the defense of such claim and shall indemnify and save FMCC harmless from all loss, cost and expenses arising therefrom, in addition, this assignment includes the provisions of the paragraph headed by the Seller below, provided that if none of the paragraphs below has been signed by Seller, this assignment shall include the provisions of the paragraph below and entitled "Repurchase". The liability of the Seller shall not be affected by any extension, renewal or other change in the time of payment of the said contract, or any change in the manner, place or terms of payment thereof, or the release, settlement or compromise of or with any party liable for payment thereof or security FMCC may, at any time have before being entitled to payment from the Seller hereunder. The Seller waives notice of the acceptance of this assignment and notices of non-payment and non-performance of the contract and any other notices required by law and agrees that all setoffs and counterclaims whatsoever first occurs.

☐ Initial "WITHOUT RECOURSE" The assignment of said contract is and shall be without recourse against the Seller, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted.

☐ Initial "REPURCHASE" The Seller guarantees payment of the full amount remaining unpaid under said contract, and covenants, if default be made in payment of any payment due thereunder by Buyer, the full amount then unpaid to FMCC upon demand, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted.

☐ Initial "LIMITED REPURCHASE" The Seller guarantees payment of the full amount remaining unpaid under said contract, and covenants, if default be made in payment of any instalment thereunder by Buyer, the full amount then unpaid to FMCC, upon demand, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted provided, that if the Buyer satisfactorily pays each of the first ____ instalments coming due under the within contract, this assignment shall thereafter be without recourse against the Seller, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted.

☐ Initial "PARTIAL GUARANTY" Notwithstanding the terms of the Ford Motor Credit Company Retail Plan, the Seller unconditionally guarantees payment of the full amount remaining unpaid under said contract, and agrees to purchase said contract from FMCC upon demand, for the full amount then unpaid whether said contract shall then be, or not be, in default, provided, however, at the time of any such demand by FMCC, Seller may, at his election, pay to FMCC the sum of $ ____ in consideration of being released from such guaranty and obligation to purchase, in such event, the assignment of said contract is without recourse against the Seller, except as otherwise provided by the terms of the Ford Motor Credit Plan in effect at the time this Assignment is accepted.

☐ Initial "FULL GUARANTY" Notwithstanding the terms of the Ford Motor Credit Company Retail Plan, the Seller unconditionally guarantees payment of the full amount remaining unpaid under said contract, and agrees to purchase said contract from FMCC, upon demand, for the full amount then unpaid whether said contract shall then be, or not be, in default.